

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF PHILIP JOHN HAYSON WALLER, solicitor (The Respondent)

Upon the application of Ian Ryan  
on behalf of the Solicitors Regulation Authority

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Mr D Potts (in the chair)  
Mr J N Barnecutt  
Mr J Jackson

Date of Hearing: 22 September 2010

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## **FINDINGS & DECISION**

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### **Appearances**

Mr Ian Ryan of Finers Stephens Innocent LLP, 179 Great Portland Street, London, W1W 5LS for the Applicant.

The Respondent did not appear and was not represented.

The Application was dated 14 December 2009. There was also a Supplementary Statement dated 13 August 2010.

### **Allegations**

- (1) The Respondent failed to keep the books of account properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules)
- (2) The Respondent fabricated letters in breach of Rule 1 of the Solicitors Code of Conduct (SCC) 2007 and Rule 1 of the Solicitors Practice Rules (SPR) 1990. It was alleged the Respondent had been dishonest.
- (3) The Respondent improperly utilised client monies for the purposes of other clients in breach of Rule 30 of the 1998 Rules. It was alleged the Respondent had been dishonest.

Allegation in Supplementary Statement dated 13 August 2010:

- (4) The Respondent deliberately and improperly withdrew client's funds for his own benefit in breach of Rule 22(1) of the Solicitors Accounts Rules 1998. It was alleged the Respondent had been dishonest.

The Tribunal had before it a letter dated 16 September 2010 from the Respondent which made reference to the allegations contained in the Rule 5 Statement dated 14 December 2010. It also referred to the substantive hearing on 22 September 2010 and the Respondent requested the Tribunal to excuse his absence as he could not afford representation.

The Applicant confirmed the Supplementary Statement dated 13 August 2010 had been certified by the Tribunal on 19 August 2010 and served on the Respondent on 15 September 2010. The Applicant referred the Tribunal to Rules 21(1) and (2) of the Solicitors (Disciplinary Proceedings) Rules 2007 which allowed the Tribunal to regulate its own procedure and to dispense with any requirements of the Rules in respect of notices, Statements, witnesses, service or time in any case where it appeared to the Tribunal to be just so to do. The Applicant submitted that the Respondent was aware of the Supplementary Statement and the underlying facts, and that there was a strong public interest in this case for the notice periods to be dispensed with, and for the case to proceed in its entirety today.

The Tribunal having considered the matter confirmed it would exercise its discretion and dispense with the requirements of the Rules in respect of the notice period necessary for service of the Supplementary Statement on the Respondent.

### **Factual Background**

1. The Respondent, born in 1948, was admitted as a solicitor on 2 April 1973. He did not hold a practising certificate.
2. At all material times, the Respondent carried on practice in partnership with his ex-wife. The firm had an office at 21 Main Street, Barton-under-Needwood, DE13 8AA. The Respondent's ex-wife dissolved the partnership on 18 September 2008 and the practice was subsequently closed without succession on 31 September 2008.
3. The Solicitors Regulation Authority (SRA) attended the firm on 28 August 2008 to carry out an investigation and subsequently produced a report dated 5 May 2009 ("the report").

### Allegation 1

4. The firm's books of account were not in compliance with the 1998 Rules and several accounts contained client money that had not been recorded in the firm's accounting records.

### Allegation 2

5. The Respondent was a co-executor of the estate of Mrs PMO and also acted as a trustee of the two Will trusts in which PMO had a life interest; the T Trust and the JLO Will Trust (JLO Trust). The Respondent informed the beneficiaries that the delay in winding up PMO's affairs had been caused by Her Majesty's Revenue and Customs (HMRC) and supplied a letter purporting to come from HMRC in support of

this statement. When challenged as to the authenticity of this letter the Respondent admitted to the beneficiaries that he had lied about the reason for the delay in winding up the estate and divulged that he had fabricated the HMRC letter.

6. The SRA investigator noted copy letters in the T Trust files apparently sent by the Respondent to the Trust's managing agent Mr L and to the Respondent's fellow trustee Mr B. Mr B and Mr L indicated that they had not received these letters and noted that they contained inaccuracies and referred to matters of which they had no knowledge. Mr B confirmed that a letter purportedly sent by him to the Respondent on 3 March 2005 and authorising a payment to the Respondent of £6,500 had neither been written nor signed by Mr B.

### Allegation 3

7. In December 2004 the Respondent arranged for the liquidation of certain ET Trust Assets and credited the resultant sums of £27,724.22 and £23,736.67 to the ledger of another client, Dr D. The Respondent subsequently made payments of £27,500 on 11 January 2005 and of £23,549.56 on 17 March 2005 to WGS to pay damages owed by Dr D to LD, a client of WGS. On 22 August 2005 £24,956.09 was transferred from the matter ledger applicable to the sale of property owned by the estate of PMO to the T Trust ledger. On 25 August 2005 this sum was transferred to WGS to pay the final instalment of compensation due to LD from Dr D. One of the letters addressed to Mr L found in the T Trust file referred to payments made by the Trust to WGS. Mr L confirmed that he had not received these letters, had no knowledge of WGS nor of any reason why such payments should be made.
8. The Respondent acted for the executrix of the estate of PMD. The investigator noted that the following monies had been transferred to the PMD ledger: £10,000 from the T Trust, £77,500 from the JLO Trust and £180,000 from the B JL matter, in total amounting to £267,500. Five payments totalling £267,500 had been made to RMB and OMD before the grant of probate on 15 December 2006. On 9 March 2007, following the proceeds of the liquidation of a major asset of the PMD estate £180,000 was returned to the B JL ledger. The monies improperly transferred from the JLO and T Trusts remained outstanding at the date of the report.
9. On 15 December 2005 the Respondent authorised a payment of £5,000 to BGP from funds belonging to the JLO Trust, apparently as compensation for the Respondent's failure to act on BGP's instructions to remove a tenant. On 13 July 2006 the Respondent made a further payment of £4,000 to BGP from JLO Trust funds, this time as compensation for loss of rent. These payments were unaccounted for in the client matter files for JLO and BGP.
10. On 21 December 2005 the Respondent transferred £17,400 from the JLO client bank account to the firm's general account. This sum was then transferred to Mr C, a client for whom the Respondent had acted in 2004. On 16 January 2005 a further £5,700 was withdrawn from the JLO client bank account and transferred to Mr C. The sums, according to Mr C, represented money recovered from a former tenant by the Respondent.
11. Between 11 January 2005 and 25 September 2006 the Respondent misused the total of £374,905.65 of client funds and of this, £180,000 has since been repaid (the B JL monies). £86,005.65 was wrongly transferred from the T Trust and £108,900 of JLO

Trust money. On 13 October 2008 the Respondent wrote to the main beneficiary of the JLO Trust, Ms BA, apologising for the inconvenience that he had caused and undertaking to repay the sum of £110,000.

#### Allegation 4

12. Until her death in March 2006, Mrs PMO was the sole beneficiary of the T Trust. The Respondent and Mr B were the trustees. On 19 July 2005 the Respondent wrote to Mr B stating that the Trust needed to make a payment of £25,790.94 in respect of Capital Gains Tax (CGT) due following the sale of Trust assets. A cheque made out to the Inland Revenue for this sum, and marked with a Unique Tax Reference number (UTR), was enclosed with the letter for Mr B's signature. Mr B signed the cheque and returned it to the Respondent. The cheque cleared the Trust's bank account on 3 August 2005.
13. On 4 February 2008 the Respondent wrote to the Trust's accountant, enclosing the Trust's chequebook and explaining that the cheque for £25,790.94 drawn on 19 July 2005 had been made out to PMO in recompense for two unpaid standing orders and unpaid interest. The Respondent made no mention in the letter of any payment of CGT to the Inland Revenue. Enquiries have revealed that the Unique Tax Reference number on the cheque was Mr Waller's UTR. Her Majesty's Revenue and Customs (HMRC), the successor to the Inland Revenue, confirmed to the new Trustees of T Trust that the cheque was not used to pay any liability owed by the Trust or PMO's estate.
14. The Tribunal reviewed all the documents submitted by the Applicant which included:-
  - (i) Rule 5 Statement dated 10 December 2009 together with enclosures;
  - (ii) Supplementary Statement dated 13 August 2010 together with all enclosures;
  - (iii) Schedule of Costs dated 21 September 2010.
15. The Tribunal reviewed all the documents submitted by the Respondent which included:-
  - (i) Letter dated 16 September 2010 from the Respondent, together with enclosure.

#### **Witnesses**

16. No witnesses gave evidence.

#### **Findings as to Fact and Law**

17. The Tribunal had considered carefully all the documents provided and the submissions of the Applicant.
18. Dealing firstly with allegation (1), it was clear to the Tribunal having considered the report prepared by the Solicitors Regulation Authority that the books of account for the Respondent's firm were not properly written up, and that several accounts contained client money that had not been recorded in the firm's accounting records. Accordingly, the Tribunal found allegation (1) to be proved.

19. Dealing with allegation (2), the Tribunal had been referred by the Applicant to an email from the Respondent to one of the beneficiaries which stated “I have let you and others as well as my profession down by lying rather than face problems head on. I have learned a severe lesson and will not do so again.” Furthermore, the Tribunal had been referred to a letter from HMRC to the beneficiary dated 19 August 2008 which confirmed they had not sent a letter dated 18 July 2008 to the Respondent’s firm and nor did they have any record of a letter dated 4 June 2008 from the Respondent’s firm.
20. The Tribunal noted the Respondent, in his letter dated 16 September 2010, confirmed he had telephoned the Capital Taxes Office “to apologise for the false letter which I had prepared from them, my apology was accepted”.
21. In the circumstances, the Tribunal were satisfied that allegation 2 was proved.
22. On the question of dishonesty, the Tribunal considered the case of Twinspectra Ltd -v- Yardley and Others [2002] UKHL 12, and whether the Respondent’s conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people, and secondly whether the Respondent himself realised that by those standards his conduct was dishonest. The Tribunal had absolutely no doubt that supplying a letter to beneficiaries from HMRC, which was false, would be regarded as dishonest by the ordinary standards of reasonable and honest people. Furthermore, having considered the email sent by the Respondent to one of the beneficiaries dated 18 August 2008, the Tribunal were satisfied that the Respondent himself realised that by those standards his conduct was dishonest. Accordingly, the Tribunal found this allegation proved, including the allegation of dishonesty.
23. In relation to allegations (3) and (4), the Tribunal had been referred to a letter dated 28 September 2008 written by the Respondent, in which he admitted he had misappropriated funds and had borrowed funds from some clients to pay off other clients and that he had used client funds to discharge his own personal debts.
24. Furthermore, in his letter dated 16 September 2010, the Respondent confirmed he had “bought off such clients by borrowing funds from other clients.”
25. The Tribunal again considered the test from Twinspectra Ltd -v- Yardley and Others and was satisfied that the Respondent’s conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people, and that it was clear from the admissions he had made in his letter of 27 September 2008 and his letter of 16 September 2010 that he himself realised his conduct was dishonest by those standards. Accordingly, the Tribunal found both allegations (3) and (4) were proved, including the allegations of dishonesty.

### **Mitigation**

26. The Tribunal had considered carefully the letter dated 16 September 2010 from the Respondent, and noted he had made reference to pressure of work, and that he had submitted the breaches were caused by stupidity rather than any premeditated plan to defraud clients. The Respondent stated he was suffering from hypertension and had high blood pressure, but had not provided the Tribunal with any medical evidence to support this. He stated he had suffered enough already and also confirmed that his professional indemnity insurers were involved in dealing with the claims of any

beneficiaries. The Respondent apologised to those affected by his actions and also apologised to fellow members of the profession.

### **Costs Application**

27. The Applicant requested an order for his costs and provided the Tribunal with a schedule confirming the costs came to a total of £31,069.11. He confirmed the Costs Schedule had not been served on the Respondent and also reminded the Tribunal that the Respondent in his letter of 16 September 2010 had confirmed he had been declared bankrupt on 16 September 2009 and that he was unable to meet any fine or order for costs. The Applicant reminded the Tribunal of the case of Frank Emilian D'Souza -v- The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's means. He submitted that whilst the Respondent had been declared bankrupt, the bankruptcy may be discharged and accordingly the Tribunal may consider it appropriate to make an order for costs in a fixed amount not to be enforceable without leave of the Tribunal. The Applicant also reminded the Tribunal that the Respondent was subject to criminal proceedings and if he were to be convicted, it was likely he would face a custodial sentence.

### **Previous Disciplinary Sanctions Before the Tribunal**

28. None

### **Sanction and Reasons**

29. The Tribunal had considered carefully the submissions of the Respondent contained in his letter of 16 September 2010 and the explanations he had given in other correspondence. The allegations found proved were extremely serious and represented gross misconduct of the worst kind. The Respondent had been placed in a position of trust and had abused that trust to meet his own needs and financial obligations. As a result of his conduct, clients had suffered a great deal and he had seriously damaged the reputation of the profession. The Tribunal was satisfied that the Respondent was not fit to continue practising as a solicitor and that the public had to be protected from him. Accordingly, the Tribunal ordered the Respondent be struck off the Roll of Solicitors.

### **Decision as to Costs**

30. The Tribunal were extremely concerned that the Costs Schedule had not been served on the Respondent. However having considered that schedule the Tribunal were of the view that whilst the costs were high they were able to assess them and should do so. Accordingly the Tribunal made an Order that the Respondent pay the Applicant's costs in the assessed sum of £26,000.
31. The Tribunal were mindful that the Respondent had been declared bankrupt on 16 September 2009 but appreciated that his bankruptcy would be discharged in the future. The Tribunal also took into account the cases of William Arthur Merrick -v- The Law Society [2007] EWHC 2997 (Admin), and Frank Emilian D'Souza -v- The Law Society [2009] EWHC 2193 (Admin). The Respondent had been struck off the Roll of Solicitors and, taking into account the bankruptcy order, the Respondent appeared to have no means to be able to pay the costs order. As there also seemed to be imminent criminal proceedings, there was also a possibility that the Respondent

would be unlikely to work in the near future. Accordingly, the Tribunal ordered that the costs were not to be enforced without leave of the Tribunal.

**Order**

- 32 The Tribunal Ordered that the respondent, Philip John Hayson, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £26,000.00, such costs not to be enforced without the consent of the Tribunal.

DATED this 20<sup>th</sup> day of December 2010  
on behalf of the Tribunal

D Potts  
Chairman